FILED
APR 6 1992

(2)

No. 91-1419

In the Supreme Court of the United States

OCTOBER TERM, 1991

GUAM HAKUBOTAN, INC., PETITIONER

v.

FURUSAWA INVESTMENT CORPORATION,
JULALE INVESTMENT CORPORATION, and
YASUDA SHOJI KK, RESPONDENTS

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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MOTION FOR LEAVE TO FILE BRIEF AND BRIEF FOR THE HONORABLE BEN BLAZ, CONGRESSMAN FROM GUAM, AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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April 6, 1992

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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Under Rule 37.2 of the Rules of this Court, amicus curiae respectfully moves for leave to file the attached brief in support of petitioner. Petitioner has consented to the filing of the brief. The motion is necessary because respondents have refused consent.

Amicus curiae is the Honorable Ben Blaz, Delegate to Congress from the Territory of Guam. As Guam's only elected representative in Congress, Delegate Blaz

has an intense interest in the proper application and construction of federal laws relating to Guam. This is particularly so with respect to statutes prescribing the appropriate division of responsibility between federal and local authorities.

This case involves the relationship between the Ninth Circuit and the local courts of Guam. It presents the important question of what standard of review the Ninth Circuit should use in reviewing the decisions of Guam courts on Guam law. That question turns on the interpretation of the Organic Act of Guam, which was enacted by Congress in 1950, and amended in 1951, 1958, and 1984.

For obvious reasons given his position, Delegate Blaz has a special concern for Guam's Organic Act and the proper implementation of that statute. Delegate Blaz strongly supports self-government for the more than 100,000 residents of Guam. The authority of Guam courts to develop and apply Guam law is an important aspect of that home rule. In a series of cases beginning in June 1988, the Ninth Circuit has departed dramatically from prior law (including decisions of this Court) and has assumed total *de novo* authority over issues of Guam law. That is inconsistent with Congress's intent in the Organic Act, and it is inconsistent with the basic right and recognized need for Guam itself to develop its own local law to suit its own cultural, business, and financial needs.

Delegate Blaz therefore seeks leave to participate in this case for the purpose of urging this Court to grant review and to restore a more deferential standard of review by the Ninth Circuit. This Court should make clear that the District Court of Guam, Appellate Division, should not be reversed on questions of Guam law

except "on a clear showing that the rule applied by the local court does violence to recognized principles of local law or established practices of the local community." *De Castro v. Board of Commissioners*, 322 U.S. 451, 456 (1944).

Respectfully submitted,

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QUESTION PRESENTED

Whether the Ninth Circuit erred in refusing to apply a deferential standard of review to decisions of the Guam courts on questions of Guam law.

TABLE OF CONTENTS

	Page
INTEREST OF THE AMICUS CURIAE	1
REASONS FOR GRANTING THE PETITION	1
CONCLUSION	6

TABLE OF AUTHORITIES

CASES:

Bonet v. Texas Co., 308 U.S. 463 (1939)	3
De Castro v. Board of Commissioners, 322 U.S. 451 (1944)	2, 3, 6
Erie R. Co. v. Tompkins, 304 U.S. 64 (1938)	5
Guam v. Yang, 850 F.2d 507 (9th Cir. 1988) (*en banc*)	2
Gumataotao v. Guam, 322 F.2d 580 (9th Cir. 1963)	2
Waialua Co. v. Christian, 305 U.S. 91 (1928)	3

STATUTE:

28 U.S.C. § 1652	5
Organic Act of Guam, 48 U.S.C. §§ 1421 *et seq.*	5

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INTEREST OF THE AMICUS CURIAE

The interest of amicus is described in the motion accompanying this brief.

REASONS FOR GRANTING THE PETITION

The issue presented by this case is one of recurring importance for Guam. The issue is whether or not Guam courts are entitled to develop their own body of law or whether Guam local law will be made by the Ninth Circuit. For many years, it was firmly established that the Guam courts could interpret their own

local laws subject to review by the Ninth Circuit only for obvious and unmistakable error. *See, e.g., Gumataotao v. Guam*, 322 F.2d 580, 582 (9th Cir. 1963):

> It is well settled that, in recognition of the fact that local needs, customs and legal systems may differ from those with which we are more familiar, decisions of local courts of United States territories on matters of purely local law will not be reversed unless clear and manifest error is shown.

Gumataotao, in turn, relied on *De Castro v. Board of Commissioners*, 322 U.S. 451, 455 (1944), in which this Court unanimously acknowledged the deferential standard of review owed to the insular courts.

This approach goes hand in glove with Guam's fundamental ability and right to develop and evolve its own body of laws and to implement home rule. In 1988, however, the Ninth Circuit suddenly and inexplicably departed from well-established law and adopted a "*de novo* review" for the Superior Court of Guam and the District Court of Guam, Appellate Division. *Guam v. Yang*, 850 F.2d 507 (9th Cir. 1988) (*en banc*). The court of appeals there announced:

> [W]e hold that the proper standard of review for questions of law is a de novo standard, which accords no deference to interpretations of local law by the Appellate Division of the District Court of Guam.

Id. at 511.

The Ninth Circuit has consistently adhered to this rule since June 1988, when *Yang* was decided. In so doing, the court of appeals has taken the prerogative to reinterpret the law for the Superior Court and the

Appellate Division in any way that the court deems fit, without giving the local courts any deference whatsoever. The Ninth Circuit's recent approach is directly contrary to the holdings of this Court, which establish that territorial courts are entitled to a deferential standard of review. *See, e.g., De Castro, supra*; *Bonet v. Texas Co.*, 308 U.S. 463, 471 (1939); *Waialua Co. v. Christian*, 305 U.S. 91, 109 (1928). The Ninth Circuit has now stripped the Guam courts of the very thing that Congress has consistently attempted to provide for Guam, *i.e.*, more self government.

Moreover, in light of the Ninth Circuit's jurisdiction over all cases from the District Court of Guam, Appellate Division, there is no possibility that the "standard of review" question can develop or "percolate" any further in the lower federal courts. The Ninth Circuit has issued its *en banc* ruling, it has adhered to that ruling in more than a dozen cases (including the present one), and no conflict in the circuits can arise. Review by this Court is needed to avoid the perpetuation of the Ninth Circuit's error.

As the Congressman from Guam, amicus does not believe it appropriate to address either the facts or the specific local law issues involved in this case. Amicus, however, does believe that there is a compelling need to address the issue of the scope of review by the Ninth Circuit over the decisions of the Guam local courts. The Ninth Circuit's shift from prior law is preventing the courts of Guam from developing their own local law to suit Guam's own local needs, all of which arise out of a unique historical and cultural heritage.

Magellan discovered Guam in 1521. From then until the Spanish-American War, Guam was held by

Spain. During these centuries, a strong Spanish influence prevailed. As a result of the Spanish-American War, Guam was acquired by the United States. It fell to the Japanese on December 12, 1941, and was liberated on July 21, 1944 by the United States Marines.

The combined influence of Guam's Spanish heritage and the Chamorro culture has developed a diverse and unique way of life that is now decidedly Guamanian. And this Guamanian culture has been influenced in recent years by immigrants, tourists, and workers from the Philippines, Japan, Korea, and other parts of Asia. Guam has been the beneficiary of both a strong Spanish and a strong Asian influence.

In these circumstances, there is a genuine need for Guam to be able to develop its own body of law to suit its own cultural, business, and financial needs. Guam has its own local trial court, the Superior Court. The judges of that court are respected members of the community and the local bar. Appeals are available from the Superior Court to the Appellate Division of the District of Guam. Though created by Congress, this court is not a district court in the same sense as federal district courts elsewhere in the United States. The Appellate Division sits exclusively as a three-judge appellate tribunal. One member of the panel is always the district court judge on Guam, and another is from the neighboring Commonwealth of the Northern Mariana Islands. The composition of the court's panels thus ensures that Guam's local culture, tradition, and needs are taken into account in the development of Guam law. The Superior Court and the District Court, Appellate Division, are fully capable of determining what the local law of Guam should be,

and they are plainly better suited for that task than random panels of the Ninth Circuit. This judicial division of labor was established by Congress in the Organic Act of Guam, as amended, 48 U.S.C. §§ 1421 *et seq.*

As the Court may imagine, the residents of Guam have a hard time understanding why Guam should be treated differently from the states with respect to this issue. Guam functions analogously to a state, as generally reflected throughout the Organic Act. 48 U.S.C. §§ 1421 *et seq.* Guam has an independent judiciary, a 21-seat unicameral legislature, an elected governor, and a delegate to Congress.

When federal courts apply state law, they must defer to the policy established by the state and, if the issue is unclear, seek to predict how the highest court of the state would rule on the particular issue. This is—and should be—also true for Guam courts. As expressly mandated by Congress in the Organic Act, the relations between U.S. courts and Guam courts "with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus, and other matters or proceedings shall be governed by the laws of the United States pertaining to the relations between the courts of the United States, including the Supreme Court of the United States, and the courts of the several States in such matters and proceedings . . . ." 48 U.S.C. § 1424-2. The statute thus incorporates the rule enunciated in *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938), requiring federal courts to follow state law on claims arising under state law, and the Federal Rules of Decision Act, 28 U.S.C. § 1652, providing that the laws of the several States shall be regarded as the rules of decision in civil actions in the courts of the United States, in cases where they apply.

The Ninth Circuit, however, now says explicitly that it will not in any way defer to determinations of Guam law made by the local Guam courts, and it will seek to review such determinations *de novo*. This is exactly what this Court said should not be done in *De Castro v. Board of Commissioners*. The Court there ruled that, on review of decisions by the territorial courts, "the problem is comparable to that presented when, upon appeals from federal district courts sitting in the states, the federal appellate courts are required to follow state law under the rule of *Erie R. Co. v. Tompkins*, 304 U.S. 64." 322 U.S. at 459.

Guam not only has the ability to develop its own laws, but it has the right to do so under the Organic Act. Amicus believes that a deferential standard of review is the only approach that accords with this congressional policy determination and with the language of the Act. He therefore asks that this Court review the decision in this case so that the proper scope of review of Guam cases in the Ninth Circuit can be authoritatively established.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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